

NOT FOR PUBLICATION

DEC 10 2007

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

MIRNA AYALA; MARCO ANTONIO
AYALA,

Petitioners,

v.

MICHAEL B. MUKASEY,** Attorney
General,

Respondent.

No. 04-76664

Agency Nos. A77-844-902
A77-844-903

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 3, 2007***

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Mirna Ayala and her husband Marco Antonio Ayala, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** Michael B. Mukasey is substituted for his predecessor, Alberto R. Gonzales, as Attorney General of the United States, pursuant to Fed. R. App. P. 43(c)(2).

*** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

denying their motion to reopen removal proceedings based on ineffective assistance of counsel. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion the BIA's denial of a motion to reopen, and review de novo claims of due process violations in removal proceedings, including claims of ineffective assistance of counsel. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We deny the petition for review.

We agree with the BIA's conclusion that the performance by Petitioners' former attorney did not result in prejudice, and thus their claim of ineffective assistance of counsel fails. *See Iturribarria v. INS*, 321 F.3d 889, 899-900 (9th Cir. 2003) (to prevail on an ineffective assistance of counsel claim, a petitioner must demonstrate that counsel's conduct was so inadequate that it may have affected the outcome of the proceedings).

PETITION FOR REVIEW DENIED.